

Lynn S. Walsh, OSB #924955  
email: [lynn@lynnwalshlaw.com](mailto:lynn@lynnwalshlaw.com)  
610 SW Alder St., #415  
Portland, Oregon 97205  
Telephone: 503-790-2772  
Attorney for Plaintiff

Meghan Apshaga, OSB # 232137  
Email: [mapshaga@droregon.org](mailto:mapshaga@droregon.org)  
David Boyer, OSB #235450  
Email: [dboyer@droregon.org](mailto:dboyer@droregon.org)  
Disability Rights Oregon  
511 SW 10th Avenue, Suite 200  
Portland, Oregon 97205  
Telephone: 503-243-2081

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

J.B.,

Plaintiff,

vs.

LEVI GRAY et al.,

Defendants.

NO. 3:23-cv-01962-CL

MOTION FOR LEAVE TO FILE THE  
FIRST AMENDED COMPLAINT

**LR 7-1 Conferral**

Pursuant to LR 7-1(a), counsel for plaintiff certifies that she attempted to confer with defendant Gray (who is unrepresented). Plaintiff's counsel sent Mr. Gray an email with the

proposed First Amended Complaint and markups of the original Complaint and asked for his availability to confer by telephone. Based upon Mr. Gray's emailed hostile responses indicating his objections, and his failure to provide his availability for a telephone conference, it was apparent that further attempts to confer by telephone would be futile. (Walsh decl. ¶¶ 5-7.)

Pursuant to LR 7-1(a), plaintiff certifies that she conferred with defense counsel for the State Defendants (all defendants excluding Gray), and they have no objection to this Motion but they were undecided as to whether or not they will be waiving 11<sup>th</sup> Amendment immunity on State Law claims. They stated they would make that decision before filing an Answer to the First Amended Complaint. (Walsh decl. ¶ 4.)

### **Motion**

Pursuant to FRCP 15 and LR 15-1, plaintiff moves the Court for leave to file the First Amended Complaint. The proposed First Amended Complaint is attached as Exhibit 1. The First Amended Complaint with markups showing the changes is attached as Exhibit 2. This motion is supported by the declaration of Lynn S. Walsh filed herewith.

The proposed First Amended Complaint adds two additional defendants (David Gonzalez and the State of Oregon), four state law claims against the State of Oregon, and numerous additional facts learned through discovery. The proposed First Amended Complaint also dismisses Mike Reese and John Doe. The statute of limitations has not run as to any claim or party. The close of fact discovery is not until June 6, 2025.

The requirements of FRCP 15(a)(1) cannot be met, thus plaintiff seeks to amend the complaint pursuant to FRCP 15(a)(2), i.e., "with the opposing party's written consent or the

court's leave." As described above, plaintiff has received emails from defendant Mr. Gray indicating his objection. Thus, plaintiff seeks to amend with the court's leave.

"The court should freely give leave when justice so requires." FRCP 15(a)(2). The discretion whether to allow leave to amend is guided by the underlying purpose of FRCP 15(a), which is "to facilitate decision on the merits, rather than on the pleadings or technicalities." *Novak v. United States*, 795 F.3d 1012, 1020 (9<sup>th</sup> Cir. 2015) (citation omitted). Thus, leave to amend is to be granted with "extreme liberality." *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1154 (9<sup>th</sup> Cir. 2014).

In this case, the statute of limitations has not run as to any party or claim. There are no relation-back issues. There is no prejudice to any defendant, including Mr. Gray.

Further, plaintiff is well aware that the State may assert 11<sup>th</sup> Amendment immunity. If it does, the statute of limitations has not yet run as to any of those claims, leaving plaintiff free to refile her state law claims in state court or, in the alternative, waiting until the State moves to dismiss her state law claims, leaving plaintiff the ability to refile her claims in state court pursuant to ORS 12.220.

For the foregoing reasons, plaintiff respectfully requests the Court to grant the Motion for Leave to Amend.

DATED: February 11, 2025

/s/ Lynn S. Walsh  
 Lynn S. Walsh, OSB #924955  
 Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that I mailed via first class mail and email the following Motion for Leave to File First Amended Complaint on February 12, 2025 to the following individuals:

Levi Gray  
2232 SE Pine St. #7  
Portland, OR 97214  
levvus007@gmail.com

/s/ Lynn S. Walsh  
Lynn S. Walsh, OSB #924955  
Attorney for plaintiff